

Claims 9 and 11 are the only claims remaining in the application, and both are specifically directed to wood.

Claim 11 stands rejected under 35 USC 112, first and second paragraphs, as the Examiner views said claim as improper because it recites a product that contains the claimed active ingredient. This combination, however, results in a wooden product that has a surprisingly and unexpectedly high degree of resistance to wood-destroying fungi. The claim clearly complies with the requirements of 35 USC 112, and the rejection of said claim under 35 USC 112, first and second paragraph, should now be withdrawn.

Claims 7 and 11 stands rejected under 35 USC 103 as obvious over Schaub in view of Ludwig and EP 0,393,746.

The accompanying Declaration of Dr. Martin Kugler, dated September 6, 1995, shows that the claimed method produces a different kind of inhibition against wood-destroying fungi than the closest prior art methods. Applicants method produced a 100% inhibition, whereas the prior art methods produced an inhibition that, at its best was only 66%, and was as low as 13%. This is more than "fungicidal activity"! Applicants invention makes possible absolute 100% protection, whereas the prior art does not.

Nothing in the prior art would suggest this kind of unexpected effectiveness in protecting wood.

In view of the above amendments and remarks, it is believed that Claims 7 and 11 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested, and the allowance thereof is courteously solicited.

Should the Examiner not deem the present amendment and remarks to place the instant claims in condition for allowance, it is respectfully requested that this Amendment Under Rule 116 be entered for the purpose of placing the prosecution record in better condition for appeal.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Applicants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 02-1445.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 02-1445.

Respectfully submitted,

SPRUNG HORN KRAMER & WOODS

By William C. Gerstenzang
William C. Gerstenzang
Reg. No. 27,552

660 White Plains Road
Tarrytown, New York 10591-5144
(914) 332-1700

I hereby certify that this paper, 4 pages, is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

SPRUNG HORN KRAMER & WOODS

By William C. Gerstenzang

Date 9/19/95